

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REVEREND EARL BILL,)	
)	
Plaintiff(s),)	No. C 03-4091 BZ
)	
v.)	ORDER SCHEDULING
)	JURY TRIAL AND
BERKELEY UNIFIED SCHOOLS,)	PRETRIAL MATTERS
)	
Defendant(s).)	
)	
_____)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Trial Date: Monday, 4/24/2006, 10 days, at **8:30 a.m.**

Pretrial Conference: Tuesday, 4/4/2006, at **4:00 p.m.**

Last Day to Hear Dispositive Motions: Wednesday, 2/15/2006

Last Day for Expert Discovery: Friday, 1/13/2006

Last Day for Expert Disclosure: Friday, 1/13/2006

Close of Non-expert Discovery: Friday, 1/6/2006

2. DISCLOSURE AND DISCOVERY

1 The parties are reminded that a failure to voluntarily
2 disclose information pursuant to Federal Rule of Civil
3 Procedure 26(a) or to supplement disclosures or discovery
4 responses pursuant to Rule 26(e) may result in exclusionary
5 sanctions. Thirty days prior to the close of non-expert
6 discovery, lead counsel for each party shall serve and file a
7 certification that all supplementation has been completed.

8 In the event a discovery dispute arises, **lead counsel** for
9 each party shall meet in person or, if counsel are outside the
10 Bay Area, by telephone and make a good faith effort to resolve
11 their dispute. Exchanging letters or telephone messages about
12 the dispute is insufficient. The Court does not read
13 subsequent positioning letters; parties shall instead make a
14 contemporaneous record of their meeting using a tape recorder
15 or a court reporter.

16 In the event they cannot resolve their dispute, the
17 parties must participate in a telephone conference with the
18 Court **before** filing any discovery motions or other papers.
19 The party seeking discovery shall request a conference in a
20 letter served on all parties not exceeding two pages (with no
21 attachments) which briefly explains the nature of the action
22 and the issues in dispute. Other parties shall reply in
23 similar fashion within two days of receiving the letter
24 requesting the conference. The Court will contact the parties
25 to schedule the conference.

26 3. MOTIONS

27 Consult Civil Local Rules 7-1 through 7-5 and this
28 Court's standing orders regarding motion practice. Motions

1 for **summary judgment** shall be accompanied by a statement of
2 the material facts not in dispute supported by citations to
3 admissible evidence. The parties shall file a joint statement
4 of undisputed facts where possible. If the parties are unable
5 to reach complete agreement after meeting and conferring, they
6 shall file a joint statement of the undisputed facts about
7 which they do agree. Any party may then file a separate
8 statement of the additional facts that the party contends are
9 undisputed. A party who without substantial justification
10 contends that a fact is in dispute is subject to sanctions. A
11 Chambers copy of all briefs shall be submitted on a diskette
12 formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or
13 WordPerfect 5.1 (DOS).

14 4. SETTLEMENT

15 This case has been referred for assignment to a
16 Magistrate Judge to conduct a settlement conference in
17 February or March 2006 in the event the case is not resolved
18 at the mediation the parties have scheduled. Counsel will be
19 contacted by that judge's chambers with a date and time for
20 the conference.

21 5. PRETRIAL CONFERENCE

22 Not less than thirty days prior to the date of the
23 pretrial conference, the parties shall meet and take all steps
24 necessary to fulfill the requirements of this Order.

25 Not less than twenty days prior to the pretrial
26 conference, the parties shall: (1) serve and file a joint
27 pretrial statement, containing the information listed in
28 **Attachment 1**, and a proposed pretrial order; (2) serve and

1 file trial briefs, motions in limine and statements
2 designating excerpts from discovery that will be offered at
3 trial (specifying the witness and page and line references);
4 (3) exchange exhibits, agree on and number a joint set of
5 exhibits and number separately those exhibits to which the
6 parties cannot agree; (4) deliver all marked trial exhibits
7 directly to the courtroom clerk, Ms. Scott; (5) deliver one
8 extra set of all marked exhibits directly to Chambers; and (6)
9 submit all exhibits in three-ring binders. Each exhibit shall
10 be marked with an exhibit label as contained in **Attachment 2**.

11 No party shall be permitted to call any witness or offer
12 any exhibit in its case in chief that is not disclosed at
13 pretrial, without leave of Court and for good cause.

14 Lead trial counsel for each party shall meet and confer
15 in an effort to resolve all disputes regarding anticipated
16 testimony, witnesses and exhibits. All motions in limine and
17 objections to witnesses or exhibits will be heard at the
18 pretrial conference. Not less than ten days prior to the
19 pretrial conference, the parties shall serve and file any
20 objections to witnesses or exhibits or to the qualifications
21 of an expert witness. Motions in limine shall be filed and
22 served not less than twenty days prior to the conference.
23 Oppositions shall be filed and served not less than ten days
24 prior to the conference. There shall be no replies.

25 Not less than twenty days prior to the pretrial
26 conference the parties shall serve and file requested voir
27 dire questions, jury instructions, and forms of verdict. The
28 following jury instructions from the *Manual of Model Civil*

1 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be
2 given absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.3, 3.5-3.8,
3 4.1-4.3. Do not submit a copy of these instructions. Counsel
4 shall submit a joint set of case specific instructions. Any
5 instructions on which the parties cannot agree may be
6 submitted separately. The Ninth Circuit Manual should be used
7 where possible. Each requested instruction shall be typed in
8 full on a separate page with citations to the authority upon
9 which it is based. Proposed jury instructions taken from the
10 Ninth Circuit Manual need only contain a citation to that
11 source. Any modifications made to proposed instructions taken
12 from a manual of model instructions must be clearly indicated.
13 In addition, all proposed jury instructions should conform to
14 the format of the Example Jury Instruction attached to this
15 Order. Not less than ten days prior to the pretrial
16 conference, the parties shall serve and file any objections to
17 separately proposed jury instructions.

18 Jury instructions that the Court has given in prior cases
19 may be downloaded from the Northern District website at
20 **<http://www.cand.uscourts.gov>**. (Instructions are located on
21 the "Judge Information" page for Magistrate Judge Zimmerman.)
22 The Court will generally give the same instructions in cases
23 involving similar claims unless a party establishes, with
24 supporting authorities, that the instruction is no longer
25 correct or that a different instruction should be given.

26 All proposed jury instructions, motions in limine, forms
27 of verdict and trial briefs shall be accompanied by a floppy
28 diskette containing a copy of the document formatted in

1 WordPerfect 6.1, 8, 9 or 10 (Windows) or WordPerfect 5.1
2 (DOS).

3 At the time of filing the original with the Clerk's
4 Office, two copies of all documents (but only one copy of the
5 exhibits) shall be delivered directly to Chambers (Room 15-
6 6688). Chambers' copies of all pretrial documents shall be
7 three-hole punched at the side, suitable for insertion into
8 standard, three-ring binders.

9 Dated: October 25, 2005

10 

11 Bernard Zimmerman
United States Magistrate Judge

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EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

_____'s Proposed Instruction No. _____.
(Party)

[Title]

[Text]

[Authority]

_____ GIVEN _____ REFUSED _____ GIVEN AS MODIFIED

ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.

1 (A) Witnesses to be Called. In lieu
2 of FRCP 26(a)(3)(A), a list of
3 all witnesses likely to be
4 called at trial, other than
5 solely for impeachment or
6 rebuttal, together with a brief
7 statement following each name
8 describing the substance of the
9 testimony to be given.

10 (B) Estimate of Trial Time. An
11 estimate of the number of court
12 days needed for the presentation
13 of each party's case, indicating
14 possible reductions in time
15 through proposed stipulations,
16 agreed statements of facts, or
17 expedited means of presenting
18 testimony and exhibits.

19 (C) Use of Discovery Responses. In
20 lieu of FRCP 26(a)(3)(B), cite
21 possible presentation at trial
22 of evidence, other than solely
23 for impeachment or rebuttal,
24 through use of excerpts from
25 depositions, from interrogatory
26 answers, or from responses to
27 requests for admission. Counsel
28 shall state any objections to
use of these materials and that
counsel has conferred respecting
such objections.

(D) Further Discovery or Motions. A
statement of all remaining
motions, including motions in
limine.

(4) Trial Alternatives and Options.

(A) Settlement Discussion. A
statement summarizing the status
of settlement negotiations and
indicating whether further
negotiations are likely to be
productive.

(C) Amendments, Dismissals. A
statement of requested or
proposed amendments to pleadings
or dismissals of parties, claims
or defenses.

(D) Bifurcation, Separate Trial of
Issues. A statement of whether

bifurcation or a separate trial
of specific issues is feasible
and desired.

(5) **Miscellaneous.**

Any other subjects relevant to the trial of the action,
or material to its just, speedy and inexpensive determination.

ATTACHMENT 2

USDC
Case No. CV03-04091 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
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JOINT Exhibit No. _____
Date Entered _____
Signature _____

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Date Entered _____
Signature _____

USDC
Case No. CV03-04091 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV03-04091 BZ
PLNTF Exhibit No. _____
Date Entered _____
Signature _____

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PLNTF Exhibit No. _____
Date Entered _____
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Date Entered _____
Signature _____

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DEFT Exhibit No. _____
Date Entered _____
Signature _____

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